UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

YUKIKO CHAID,

Plaintiff,

v.

DANIEL R. GLICKMAN,

Defendant.

_____/

No. C98-1004 WHO (JCS)

REPORT AND RECOMMENDATION RE PLAINTIFF'S MOTION FOR AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS

Plaintiff's Motion For Award Of Reasonable Attorneys' Fees And Costs was referred to the undersigned by the Honorable William H. Orrick. Having reviewed the evidence, this Court makes the following findings and recommendations.

I. INTRODUCTION

In this employment discrimination action brought by Plaintiff Chaid against federal Defendant Glickman, Plaintiff seeks reasonable attorneys' fees as the prevailing party under Title VII of the Civil Rights Act of 1964. The case proceeded through the close of discovery. On the eve of trial, Defendant made its first offer to settle the case, pursuant to Fed. R. Civ. Proc. 68. After some modifications were made, Plaintiff accepted Defendant's offer and the case settled for $150,000.00 (approximately six times Plaintiff's annual salary), exclusive of reasonable attorneys' fees. Although Defendant agreed to pay Plaintiff's reasonable attorneys' fees and costs as part of the settlement, the parties have been unable to agree on the appropriate amount. *See* Stipulation and Order Approving Compromise Settlement, filed June

25, 1999. For the reasons stated below, it is recommended that the Court grant Plaintiff's motion in part, and award $238,795.00 in fees and $8,032.12. in costs.[1]

II. BACKGROUND

Plaintiff is a 66-year-old, Japanese-American female who has been employed as a purchasing agent for the U.S. Department of Agriculture in Salinas, California since 1991. In her complaint, Plaintiff alleges that her immediate supervisor, Thomas Nelson, repeatedly engaged in sexually offensive conduct in front of her and other female employees, and that when she complained about this conduct to the appropriate agency personnel,[2] she was subjected to retaliation, harassment and discrimination by Mr. Nelson. She further alleges that management personnel within the agency were dismissive of Plaintiff's complaints and did not take appropriate action to address the problem. Plaintiff lists four causes of action in her complaint, all based upon the same incidents described in the Complaint: 1) discrimination on the basis of gender (Complaint at 9-11); 2) discrimination on the basis of race (Complaint at 11-12); 3) retaliation for protected activity (Complaint at 12-13); and 4) discrimination on the basis of age (Complaint at 13-14).

In January 1997, Plaintiff retained Mr. Brad Yamauchi, of Minami, Lew & Tamaki LLP, to represent her in this action on a contingency basis, after searching for over a year and talking to five attorneys in an effort to find an attorney who would take the case. *See* Declaration of Yukiko Chaid In Support Of Plaintiff's Motion For Attorneys' Fees at ¶¶ 2-6. She filed her Complaint on March 12, 1998, after pursuing her EEO complaints before the Defendant. (Complaint at 2). The first case management conference was held on July 15, 1998, and the case was referred to Magistrate Judge Brazil for settlement. At that settlement conference, held on November 4, 1998 (eight months into the case), Defendant refused to make any settlement offer. *See* Declaration of Jack W. Lee In Support Of Plaintiff's Motion For Attorneys' Fees at 5, ¶ 12.

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[1] In its pleadings in opposition to this motion, Defendant does not challenge the amount of Plaintiff's request for costs. However at oral argument, without specifying which cost items, Defendant asserted that some items were not recoverable under the local rules. As described below, items not recoverable under the local rules have be deducted from the cost bill.

[2] Plaintiff alleges that she complained to the EEO counselor about Mr. Nelson's conduct on July 29, 1992 (Complaint at 3, ¶ 9) and in February 1993 (*id*. at ¶ 10), and that she filed a formal EEO complaint against him March 1, 1995 (*id*. at 6-7, ¶ 21).

Following the November 4 settlement conference, the parties engaged in substantial discovery. Because Defendant contended that each of ten adverse employment actions alleged by Plaintiff (Lee Decl. at 4-5, ¶ 11) was justified in light of legitimate performance problems on the part of Plaintiff, Plaintiff's counsel was required to exhaustively investigate the basis of each adverse action. Defendant identified "scores" of witnesses for Plaintiff to interview or depose. *Id.* at 5, ¶ 13. Plaintiff's counsel reviewed significant documentary evidence. Plaintiff produced 737 pages of documents; Defendant produced 2,236 pages of unorganized documents. *Id.* at 5, ¶ 14. Plaintiff and Mr. Nelson were both deposed over a period of three days. *Id.* A total of eight depositions were held (totaling twelve sessions), of which six depositions were conducted by Plaintiff's counsel. *Id.* at 5, ¶ 13.

By order filed July 21, 1998, the Court established a trial and pretrial preparation schedule. *See* Order for Civil Pretrial Conference, dated July 21, 1998. The first wave of pretrial filings were due on April 29, 1999, with a second group to be filed on May 13, 1999. *Id*. All motions in limine were due on May 6, 1999, with a pretrial conference three weeks later, on May 27, 1999. *Id*. The trial was scheduled for June 7, 1999. *Id.*

In the absence of a settlement offer, Plaintiff prepared for trial. Accordingly, on April 29, 1999, Plaintiff filed her trial brief, witness list, and exhibit list. In the middle of the trial preparation, Defendant made its first and only settlement offer. Defendant offered to settle the case, pursuant to Fed. R. Civ. Proc. 68 for $150,000.00 exclusive of attorneys' fees. Lee Decl. at 6, ¶ 15. It was not until May 12 that the Defendant agreed to purge Plaintiff's personnel file of two disciplinary suspensions as part of the settlement. *Id.* at ¶ 16. By that time, Plaintiff had filed the trial pleadings listed above and had worked on or prepared the other trial filings which were due the following day, including proposed voire dire, jury instructions and verdict forms. Order for Civil Pretrial Conference at 5; *See also* Lee Decl. at 6, ¶ 17.

On July 25, 1999, the Court issued a Stipulation And Order Approving Compromise Settlement. Like the Rule 68 offer, the settlement did not allocate a lump sum payment to any particular cause of action or characterize the damages according to any claim or theory of relief. The settlement amount,

$150,000.00, represented more than six times the annual salary that Plaintiff had earned while employed by the Defendant.[3]

As part of the settlement, Defendant agreed to pay Plaintiff's "reasonable attorneys' fees and costs" but did not agree to a specific dollar amount. Stipulation And Order Approving Compromise Settlement at 3, ¶ 8. The amount of reasonable attorneys' fees and costs was to be resolved by the Court if the parties were unable to resolve this issue on their own. *Id.* On June 7, 1999, Defendant made an offer -- styled as a Rule 68 offer -- to pay $150,000.00 for attorneys' fees and costs. Defendant's Opposition at 1. Plaintiff rejected Defendant's offer. The parties did not reach agreement on the amount of fees and costs.

Plaintiff now seeks attorneys' fees in the amount of $244,745.00 and costs in the amount of $8,873.62. *See* Plaintiff's Hearing Brief In Support Of Reasonable Attorneys' Fees at 3 (seeking $253,988.62 in fees and costs).[4] Of these, approximately $58,000.00 in fees and less than $3,000.00 in costs were incurred in connection with this fee application.

Defendant asserts that Plaintiff is entitled to $140,000.00 in attorneys' fees.[5] Opposition at 1. Defendant argues that: 1) counsel spent excessive time on the case; 2) some of Plaintiff's time entries are vague; 3) some of the time entries are duplicative; 4) many of the tasks that were performed by partners could have been performed more cost-effectively by associates, paralegals and secretaries; 6) counsel made an erroneous jury trial demand. Finally, Defendant asserts that Plaintiff is not entitled to fees incurred in pursuing her fee application ("fees on fees") after June 7, 1999, when Defendant made an offer to pay $150,000.00 for attorneys' fees and costs in the case.

[3] Although the record before the Court is unclear, at oral argument on this motion counsel for Plaintiff represented to the Court that Plaintiff's annual salary was in the $20,000.00 to $23,000.00 range. Defendant did not dispute this representation.

[4] This number is $370.00 less than the figure contained in Plaintiff's hearing brief because the Court has corrected for an error in the computation of the lodestar, as is explained below.

[5] As noted above, Defendant did not address the issue of costs in its brief but asserted at the hearing that many of the costs sought by Plaintiff are disallowed under the local rules. Plaintiff's costs will be addressed below.

III. ANALYSIS

A. Legal Standard

Under Title VII, a prevailing party other than the United States is entitled to reasonable fees and costs. 42 U.S.C. § 2000e-5(k). This fee-shifting provision is designed to make it attractive for counsel to take discrimination cases, thereby providing access to the courts for victims of discrimination and facilitating enforcement of the statute. *Blanchard v. Bergeron*, 489 U.S. 87, 95-96 (1986).[6] Once a court determines that an applicant is a prevailing party who should be awarded attorneys' fees, it must next determine what fees are reasonable. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (concerning attorneys' fee awards under § 1988). Here, the Defendant does not dispute that Plaintiff is entitled to reasonable attorneys' fees as a prevailing party. However, the parties take widely divergent positions with respect to the amount of reasonable fees and costs that should be awarded.

In this Circuit, the starting point for determining reasonable fees is the calculation of the "lodestar," which is obtained by multiplying the number of hours reasonably expended on litigation by a reasonable hourly rate. *See Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987) (citing to *Hensley v. Eckerhart*, 461 U.S. 424 (1983)). In determining a reasonable number of hours, the Court must review detailed time records to determine whether the hours claimed by the applicant are adequately documented and whether any of the hours claimed by the applicant were unnecessary, duplicative or excessive. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986), *reh'g denied, amended on other grounds*, 808 F.2d 1373 (9th Cir. 1987). To determine a reasonable rate for each attorney, the Court must look to the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience and reputation. *Id.* at 1210-1211.

In calculating the lodestar, the Court should consider any of the factors listed in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975), cert. denied 425 U.S. 951 (1976), that are relevant. *Jordan*, 815 F.2d at 1264 n. 11 (noting that the Ninth Circuit no longer requires that the district court address every factor listed in *Kerr*). In *Kerr*, which was decided before the lodestar approach was adopted by the Supreme Court as the starting point for determining reasonable fees in *Hensley v.*

[6] Fees are calculated no differently when the federal government, rather than a private party, is the losing defendant. *Copeland v. Marshall*, 641 F.2d 880, 894 (D.C. Cir. 1980) (en banc).

Eckerhart, 461 U.S. 424, 433 (1983), the Ninth Circuit adopted the 12-factor test articulated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). This analysis looked to the following factors for determining reasonable fees: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the 'undesirability' of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

To the extent that the *Kerr* factors are not addressed in the calculation of the lodestar, they may be considered in determining whether the fee award should be adjusted upward or downward, once the lodestar has been calculated. *Chalmers*, 796 F.2d at 1212. However, there is a strong presumption that the lodestar figure represents a reasonable fee. *Jordan*, 815 F.2d at 1262. An upward adjustment of the lodestar is appropriate only in extraordinary cases, such as when the attorneys faced exceptional risks of not prevailing or not recovering any fees. *Chalmers*, 796 F.2d at 1212.[7]

B. Reasonableness of Hourly Rates

Plaintiff was represented in this action by two partners of the firm of Minami, Lee & Tamaki LLP, who were assisted by three associates. Plaintiff asserts that the fee award should be based upon the following rates for each of these attorneys: 1) Jack Lee (partner) – $350/hour; 2) Brad Yamauchi (partner) – $350/hour; 3) Lisa Duarte (sixth year associate) – $245/hour; 4) William Kwong (sixth year associate) – $245/hour; 5) John Ota (first year associate) – $165/hour. The reasonableness of these rates will be addressed for each individual attorney below.[8]

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[7] While many of the cases that address reasonable fees involve 42 U.S.C. § 1988, these cases are applicable to fee awards under Title VII as well. *See Hensley*, 461 U.S. at 433 n. 7 (stating that the guidelines set forth for determining reasonable attorneys' fees in that case are applicable in all cases in which Congress has authorized an award of attorneys' fees to the prevailing party).

[8] Defendant asserts that the rate used to calculate the lodestar should be reduced because partners performed work that could have been accomplished more cost-effectively by associates or non-lawyers whose hourly rates are substantially lower than those of Messrs. Lee and Yamauchi. This argument will be addressed below, in Section C(6).

1. Jack Lee

Mr. Lee was the principal attorney in this action. Lee Declaration at 3, ¶8. He was admitted to the California State Bar in 1976 and has been practicing exclusively in the area of employment discrimination for the last twenty years. *Id.* at 2, ¶¶ 2-3. As senior counsel to Minami, Lew & Tamaki LLP, Mr. Lee is primarily involved in complex employment litigation. *Id.* at 2, ¶3. Prior to joining his current firm, Mr. Lee worked for nine years as Trial Team Leader for complex class action litigation with the firm of Saperstein, Goldstein, Demchak & Baller, where he worked on numerous large and complex employment discrimination class actions. *Id.* at 2, ¶¶4-5. Before that, Mr. Lee served as Regional Attorney for the Department of Education's Office of Civil Rights for eight years. *Id.* at 2, ¶4.

According to the Declaration of Barry Goldstein In Support of Plaintiff's Motion For Attorneys' Fees, the rate of $350/hour charged by Mr. Lee in this case is consistent with -- and possibly lower than -- the rates charged in the Bay Area legal community by attorneys of comparable reputation, experience and expertise working on a non-contingent basis. Goldstein Declaration at 3, ¶9. Mr. Goldstein states further that it is common and expected for an attorney to recover a greater amount where the cases is taken on a contingent basis, as in this case. *Id.* at 4, ¶10. Mr. Goldstein has been managing partner at Saperstein, Goldstein, Demchak & Baller for the last ten years and has testified in a number of cases as an expert on attorneys' fees. *Id.* at 3, ¶ 7. He states
that he is "very knowledgeable of the legal work and reputation of Jack W. Lee among San Francisco Bay Area employment lawyers," and that Mr. Lee is "an excellent lawyer who provides extremely high quality legal representation." *Id.* at 4, ¶12. See also Declaration of John M.True (reflecting qualifications similar to Mr. Lee's and stating that his current hourly rate for non-contingent cases is $375/hour); Declaration of James Finburg (indicating that all of the partners at the firm of Lieff, Cabraser, Heimann & Bernstein who graduated in the 1960s and 1970s charge $450/hour).

In addition, a number of courts have awarded Mr. Lee his full hourly rate or his full hourly rate plus an enhancement for his work in employment discrimination cases. Mr. Lee was awarded his full hourly rate plus an enhancement in *Barnhart v. Safeway Stores*, 60 Fair Empl. Prac. Cases (BNA) 751 E.D. Cal. 1992, *Shores v. Publix Stores*, 1996 LEXIS 3381, 1997 LEXIS 16778 (M.D. Fla. 1996) and *Butler v.*

Home Depot, 70 Fair Empl. Practice Cases (BNA) 51 (N.D. Cal. 1996). Recently, Mr. Lee and Mr. Yamauchi were both awarded their full hourly rate of $350/hour by U.S. District Judge Claudia Wilken in *Ramirez v. Runyon*, C97-02983 (N.D. Cal. 1999), in which a plaintiff alleged discrimination and retaliation by her employer, the U.S. Postal Service.

On the basis of the above, this Court finds that Mr. Lee's rate of $350/hour is a reasonable rate for calculating the lodestar amount in this case.

2. Brad Yamauchi

Mr. Brad Yamauchi, like Mr. Lee, is a partner with Minami, Lew & Tamaki LLP. Declaration of Brad Yamauchi In Support Of Plaintiff's Motion For Reasonable Attorneys' Fees at 2, ¶ 4. He has been a member of the State Bar of California since 1976 and has extensive experience in employment discrimination law. *Id.* at 3, ¶ 5. Mr. Yamauchi began his legal career as a staff attorney for the Human Relations Commission of Santa Clara County, where he investigated and conciliated complaints of discrimination in employment, housing, education and police relations under local, state and federal law. *Id.* at 3, ¶ 5. In 1979, he became an Assistant Regional Attorney in the Civil Rights Division of the then-named U.S. Department of Health, Education and Welfare. *Id.* at ¶6. When the department split in 1984, Mr. Yamauchi continued with the Department of Health and Human Services. *Id.* From 1979 to 1987 he prosecuted Title VI and Section 504 employment and federal services discrimination cases against recipients of federal financial assistance. *Id.* From 1987 to 1990, Mr. Yamauchi defended the agency against civil rights employment claims. *Id.* Mr. Yamauchi estimates that between 1979 and 1990, he supervised the investigation and evaluation of over 2,000 complaints of discrimination for violations under Titles VI and VII of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act. *Id.* Finally, in 1990 Mr. Yamauchi joined the firm of Minami, Lew & Tamaki LLP as a plaintiffs' employment litigation attorney. *Id.* at 3, ¶7. He became a partner in 1993 and has litigated numerous complex employment discrimination class actions. *Id.*

Based upon the declarations of Barry Goldstein, John True and James Finberg, and the ruling of the U.S. District Court in *Ramirez v. Runyon* (cited above), this Court finds that Brad Yamauchi's rate of $350/hour is a reasonable rate for calculating the lodestar in this case.

3. William Kwong, Lisa Duarte and John Ota

William Kwong and Lisa Duarte both graduated from law school and were admitted to the State Bar of California in 1993, and are associates with Minami, Lew & Tamaki LLP. Declaration of William Kwong at 2, ¶¶ 2-3; Declaration of Lisa Duarte at 2, ¶¶ 2, 5. Their hourly rate is $245. John Ota graduated from law school in 1997 and was admitted to the State Bar of California in 1998. Declaration of John Ota at 1, ¶¶ 1-2. His hourly rate is $165. While Plaintiff has not submitted declarations that specifically address the reasonableness of these rates, the Finberg Declaration indicates that at Lieff, Cabraser, Heimann & Bernstein, the 1999 billing rate for one partner who graduated from law school in 1993 and for an associate who graduated in 1994 is $300/hour, while the rate for an associate who graduated in 1995 is $250/hour. Moreover, Defendant does not contend that the hourly rates charged by Kwong, Duarte, and Ota in this case are unreasonable. The Court finds these rates to be reasonable and will use them to determine the lodestar in this action.

4. Law Clerk/Paralegal

Plaintiff also seeks fees for work performed by a law clerk/ paralegal at a rate of $100/hour. Defendant does not challenge the reasonableness of this rate, which the Court will use to determine the lodestar in this action.

C. Reasonableness of Time Spent

1. Hours Billed By Attorneys and Paralegal In This Action

Plaintiff asserts in its Reply that the lodestar should be calculated using the following figures:

Attorney	**Rate**	**Hours**	**Fees**
Jack Lee	$350/hour	590.2	$206,570.00
Brad Yamauchi	$350/hour	60.7	21,245.00
Lisa Duarte	$245/hour	8.8	2,156.00
William Kwong	$245/hour	14.3	3,503.50
John Ota	$165/hour	11.7	1,930.50
Law Clerk/			

Paralegal[9]	$100/hour	43.7	4,370.00
Subtotal:			239,775.00
Costs[10]:			8,863.12
Lodestar:			$248,638.12

In her Hearing Brief, Plaintiff seeks an additional $4980.50 for fees and costs incurred after the reply was filed, in connection with preparation of the additional schedules ordered by the Court. This amount includes 11.2 hours of Jack Lee's time, 10.5 hours of paralegal time and $10.50 for messenger service. The total lodestar sought is therefore $244,745.00 in fees and $8,873.62 in costs.

In arriving at the numbers listed above, Plaintiff's counsel exercised billing judgment by deleting approximately 50 hours of time that would not have been billed to paying clients. Lee Decl. at 4, ¶ 10; Yamauchi Decl. at 5, ¶ 12. This includes 10 hours deleted by Mr. Lee for time spent initially reviewing the case and another 20.5 hours of time spent by legal assistants who were present and assisted Mr. Lee at key depositions. Lee Decl. at 4, ¶ 10. It also includes 9 - 10 hours spent by Mr. Yamauchi in initial conferences with Mr. Lee and subsequent strategy sessions with him. Yamauchi Decl. at 5, ¶ 12.

2. Overall Reasonableness of Hours Billed in the Action

The Court has reviewed in detail the extensive billing records submitted by Plaintiff's counsel, as well as the objections submitted by Defendant. In addition, the Magistrate Judge ordered Plaintiff to provide a breakdown of each attorney's billings, dividing the time into ten categories. Copies of the tables breaking down attorney and non-attorney time submitted by Plaintiff are attached to this Report as Exhibit A.

[9] In Plaintiff's Hearing Brief, counsel explains that the billing summary attached to the original Motion, which listed only 30.7 hours of paralegal time erroneously failed to reflect 11.7 hours of paralegal time billed in April 1999. It also did not include 1.3 hours of paralegal time spent on the Reply brief for this Motion. However, in the Reply brief the Plaintiff erroneously calculated the amount sought for the law clerk's hours as $4,740.00 rather than $4,370.00, a difference of $370.00. The Court reduces the lodestar amount sought by Plaintiff accordingly.

[10] In Plaintiff's Hearing Brief, counsel explains that the billing summary attached to the original Motion erroneously failed to include a cost item of $172.62 for serving the summons. She also notes that the original cost figure was based upon a computational error and that the costs listed in the original Motion actually added up to $8690.50, rather than $8438.50. These errors were corrected in the Reply brief.

Based on all of these records, the Court finds that, with the exceptions noted below, the overall number of hours spent by each of the time keepers on tasks in this matter are more than reasonable. The categorized attorney billing summaries indicate that very small amounts of time were devoted to conferences between attorneys and legal research. For example, Exhibit A indicates that only 19.1 of 685.7 attorney hours were devoted to intraoffice correspondence, memoranda, and telephone calls. This is less than 3% of the total hours billed. Similarly, legal research billing is approximately 4% of the hours billed. A reasonable amount of time was spent on depositions. There were approximately 12 days of depositions in this case, and Plaintiff's counsel devoted 186.4 hours to those depositions. This yields an average of 15.53 hours in preparation and deposition time for each day of deposition. The Court finds that this is a reasonable amount in a matter of this complexity involving a significant document review. The Court also finds that the time devoted to interviews, conferences, telephone calls, correspondence, and meetings with clients, witnesses, experts, and opposing counsel or parties (other than deposition time), 107.2 hours, is reasonable given the fact that the case proceeded through trial preparation. Similarly, the 119.7 hours devoted to the drafting of pleadings is also reasonable. A very small amount of non-attorney time – 43.7 hours – was billed by paralegals and law clerks, and is appropriate in this matter.

However, upon review of the detailed records, the Court finds three areas in which reductions should be made from the lodestar.

First, Plaintiff spent 25 hours of Mr. Lee's time, 6.3 hours of Ms. Duarte's time, and 1.2 hours of William Kwong's time drafting the jury instructions in this case. At oral argument, Mr. Lee acknowledged that this was more time than would ordinarily be spent on jury instructions. He attempted to justify this expenditure of time by referring to two significant 1998 Supreme Court decisions in the area of employment discrimination law. However, by the time the jury instructions were drafted, those decisions were many months old, and time researching them had already been spent. Moreover, while the cases might have impacted a few of the instructions, they cannot justify the time spent. Accordingly, the Court will deduct 10 hours of Mr. Lee's time spent on these jury instructions as excessive.

In addition, Mr. Lee spent 27.7 hours preparing the reply brief, including reply declarations. Of course, the Defendant's Opposition was extensive. It included a 17-page brief and multiple declarations. The reply brief required a line-by-line analysis of the 90 specific billing entries challenged by Defendant.

While responding to such a complex Opposition is indeed challenging, the Court finds that 27.7 hours by lead counsel on the matter is somewhat excessive and should be reduced by 7 hours.

Finally, Plaintiff spent 11.2 hours of attorney time and 10.5 hours of paralegal time preparing the hearing brief at the request of the Court. In view of the fact that the hearing brief included very useful breakdowns of attorney time by category, and were requested by the Court, the Court finds these amounts to be reasonable.

In addition to these deductions, the Defendant asserts that various deductions should be made. In the paragraphs that follow, the Court addresses each of those contentions.

3. Excessive Hours

Defendant asserts that Plaintiff's billing summary includes "excessive hours," listing 13 specific time entries that it argues should be excluded from the lodestar. In order to justify a reduction in the lodestar based upon excessive time, Defendant must show that "the time claimed is obviously and convincingly excessive." *Perkins v. Mobile Housing Board*, 847 F.2d 735, 738 (11th Cir. 1988); *see also Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992) (holding that once the prevailing party has documented the hours for which it seeks attorneys' fees, the party opposing fee application has the burden of submitting evidence challenging the accuracy and reasonableness of the hours charged). Defendant has failed to meet this burden as to any of the specific time entries that it claims are excessive. Below, the Court will address each time entry listed by Defendant in its Opposition.

a. **4.8 hours billed on October 31, 1997**: The timekeeper reports describe this time as follows: "Telephone call client re cases, rv all files, prep issues for federal court." Exhibit 3 to Plaintiff's Motion. Defendant asserts that this time is excessive because: 1) it is unclear what files Plaintiff's counsel was reviewing; 2) Plaintiff's counsel billed almost 15 hours for preparing the complaint, even though the firm "supposedly specializes in employment discrimination work." With respect to the first argument, Plaintiff is not required to list each exact file that counsel reviewed. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 n. 12 (1983) (noting that "[p]laintiff's counsel . . . is not required to record in great detail how each minute of his time was expended. But at least counsel should identify the general

subject matter of his time expenditure"). Further, the fact that Plaintiff's counsel billed almost 15 hours for preparing the complaint and that Minami, Lew & Tamaki specializes in employment discrimination does not make this time excessive. As Plaintiff notes in her Reply brief, each employment case has unique characteristics and employment discrimination law is constantly changing, most recently following the Supreme Court's decision in *Burlington Industries v. Ellerth*, 118 S. Ct. 2257, 2270 (1998) and *Fargaher v. Boca Raton*, 118 S. Ct. 2275, 2292-2293 (1998), which substantially changed the law with respect to liability for supervisors -- a key issue in this case. Therefore, the Court finds that Defendant has failed to establish that this time was excessive.

b. **24.2 hours billed between January 23 and April 17, 1998**: Defendant states that "a plaintiff's attorney . . . has 24.2 hours of entries that state that he reviewed EEO administrative documents," implying that these hours were spent exclusively reviewing EEO documents. Without reaching the question of whether 24.2 hours would be an unreasonable amount of time for reviewing EEO administrative documents, the Court rejects this argument. Although some of these entries include review of EEO documents, they also include many other activities, including drafting the complaint, preparing for EEO settlement negotiations, and talking to the client about the upcoming settlement negotiations. *See* Exhibit 3 to Plaintiff's Motion at 4. Therefore, the Court finds that Defendant has failed to establish that this time was excessive.

c. **6.8 hours billed on September 10, 1997**: Defendant asserts that this time spent reviewing the file and conducting research was excessive because a firm specializing in employment law should already know the law. The Court declines to find that this time is excessive based upon the broad assertion that it is unreasonable for a firm that specializes in a particular area to bill for research in that area of law. As noted above, each discrimination case has its own individual characteristics and the field of employment discrimination law is rapidly changing. Moreover, the time entry of 6.8 hours includes not only legal research but also includes a telephone call to the client and preparation for mediation. *See* Exhibit 2 to

Plaintiff's Reply at 6. Therefore, the Court finds that Defendant has failed to establish that this time was excessive.

d. **2 hours billed on March 9, 1998**: Defendant asserts that 2 hours spent on March 9 were excessive because Mr. Lee duplicated the work performed by Mr. Yamauchi on October 31, 1997. This time is not excessive. Plaintiff has already exercised billing judgment by omitting 2.2 hours of time for this date, as is clearly reflected by the "Partial Listing Of Time Omitted From Lodestar," included as Exhibit 2 to Plaintiff's Motion.

e. **2 hours billed on July 2, 1998 and 1.2 hours billed on July 14, 1998**: Defendant asserts that 3.2 hours billed for two telephone conversations with the client regarding the case management conference and the case management conference statement was excessive. In light of the many important issues regarding discovery and other issues in the case that needed to be addressed in the statements and at the hearing, the Court does not find that this time is excessive.

f. **2.5 hours billed on July 17, 1998**: Defendant asserts that Plaintiff should not be allowed to bill for this time because it was spent conducting research. As stated above, this Court declines to hold that a specialist in a particular area of law may not be awarded fees for research conducted as part of the case in that area of the law, especially where, as here, the law has changed substantially in the last two years. Therefore, the Court finds that Defendant has failed to establish that this time was excessive.

g. **30 minutes on November 2, 1998**: Defendant asserts that 30 minutes of time billed on November 2 is excessive because Mr. Lee stated that he spent this time talking to Mr. Yamauchi on the telephone about the case, but there is no corresponding entry billing for a telephone conference by Mr. Yamauchi to Mr. Lee. Defendant apparently is suggesting that the telephone conversation time entry is false and that the conversation did not occur at all -- even though Defendant notes that Mr. Yamauchi included in the time entries provided to Defendant in May 1999 a listing for a 30 minute telephone call with Mr. Lee the next day, which Mr. Lee's time entries do not reflect. Exhibit 2 to Plaintiff's Reply at 30. The Court does not find that the absence of a corresponding entry for Mr. Yamauchi's time on

November 2 is sufficient to establish that the telephone call did not occur. Rather, it appears more likely that Mr. Yamauchi mistakenly listed the time for November 3 rather than November 2, especially as both time entries indicate that the telephone conversation concerned the upcoming settlement conference. Therefore, the Court finds that Defendant has failed to establish that this time was excessive.

h. **1.4 hours on January 20, 1999, .5 hours on February 16, 1999, .3 hours on February 17, 1999 and 2 hours on February 18, 1999**: Defendant lists this time as excessive because it was spent responding to the Court's order to show cause but concedes that Plaintiff properly deleted this time from the lodestar. Because Plaintiff did not include these hours in the lodestar, the Court need not reach the question of whether they were excessive.

i. **3.5 hours on February 21, 1999 and 4 hours on February 22, 1999**: Defendant challenges as excessive the time billed on these dates to prepare for the deposition of Rosemary Cairo. As a coworker of Plaintiff, and one of three people (including Plaintiff) who allegedly complained to the EEO representative about the sexually offensive conduct of Plaintiff's supervisor, Rosemary Cairo was potentially a key witness. See Complaint at 3, ¶ 10. In addition, Plaintiff's counsel was required to review 2300 pages of potentially important documents in preparing for this deposition. Reply at 10. Therefore, the Court finds that Defendant has failed to establish that this time was excessive.

j. **3.5 hours on March 8, 1999 and 2.6 hours on March 10, 1999**: Defendant asserts that this time, spent preparing for the deposition of Plaintiff's supervisor, Thomas Nelson, was excessive. The deposition of Mr. Nelson, who is alleged to have discriminated and retaliated against Plaintiff, was obviously critical to Plaintiff's case. Therefore, the Court finds that Defendant has failed to establish that this time was excessive.

k. **4.6 hours on March 10, 1999 and 3.4 hours on March 17, 1999**: Defendant argues that this time was excessive because it was spent researching issues related to compensatory damages, which a law firm specializing in employment law should already have known. As stated above, this Court declines to reduce the hours for calculating the lodestar solely on

the basis of a general assertion that a specialist in a particular area of law should not be awarded fees for research in that area of the law. Therefore, the Court finds that Defendant has failed to establish that this time was excessive.

l. **3.8 hours on April 22, 1999**: Defendant argues that this time, which was spent preparing Plaintiff for her deposition, was excessive. Plaintiff's deposition, like that of Mr. Nelson and Ms. Cairo, was critical to her case. Therefore, the Court finds that Defendant has failed to establish that this time was excessive.

m. **36.7 hours between April 8, 1999 and May 12, 1999**: Defendant asserts that Plaintiff billed excessive time for drafting jury instructions. As describe above, the Court will deduct 10 hours of Mr. Lee's time spent on the instructions.

4. Specificity of Time Entries

Defendant also argues that Plaintiff's lodestar should be reduced because some time entries are vague, listing an additional thirteen time entries. Opposition at 13. The basis for asserting that all but one of these time entries are vague is that they do not list the specific files, documents or cases that were reviewed. In addition, Defendant asserts that one time entry was vague because it referred to a telephone call with the client without describing the subject matter of the call. Under *Hensley v. Eckerhart*, the Plaintiff is not required to list the specific documents or files reviewed so long as the general subject matter of the time expenditure is clear. 461 U.S. 414, 437 n. 12 (1983). Here, Plaintiff's time entries are sufficiently detailed to allow the Court to determine whether they are reasonable. Accordingly, the Court declines to omit these time entries from Plaintiff's lodestar.

5. Duplicative Time Entries

Defendant asserts that the lodestar should be reduced because the time reports include duplicative time entries. The Court does not find that any of the time entries cited by Defendant in support of this argument are duplicative. Each alleged duplication will be addressed below.

a. **1.2 hours billed on July 7, 1998 and 4.6 hours billed on March 10, 1999**: Defendant contends that time entries listed on the May 1999 timekeeper report reflect that two

different attorneys performed the same work. Defendant cites to two time entries, which are described as follows: 1) "Research re Rule 68 offers." July 7, 1998 time entry, contained in Exhibit 3 to Motion at 12 (see also Exhibit A to Defendant's Opposition at 17); 2) "Research re: Whether the applicable statutory cap on compensatory damages applies to discrete conduct over a period of time or to one action as a whole. Look at Legislative History; Federal Case Law and Annotated Statutes; Shepardize case." March 10, 1999 time entry, contained in Exhibit 3 to Motion at 43 (see also Exhibit A to Defendant's Opposition at 38). The Court does not find these time entries to be obviously duplicative. Moreover, to the extent that these two time entries describe the same subject matter, the fact that legal research is an open-ended task precludes the Court from finding that two time entries for research on the same issue warrants a reduction in the lodestar on the basis that the same work has been billed twice. Because the Court does not find the total time billed for this research to be excessive, the Court declines to reduce the lodestar on this basis.

b. **1.3 hours billed on March 22, 1999**: Defendant further asserts that the time entry for March 22, 1999 duplicates the work billed on July 7, 1998 and March 10, 1999, described above. The March 22 entry includes in the description, "legal research re damage cap." March 27, 1999 time entry, contained in Exhibit 3 to Motion at 25 (see also Exhibit A to Defendant's Opposition at 40). While this entry indicates that research was performed on the same subject as on March 10, 1999, as stated above, the fact that legal research is an open-ended task precludes the Court from finding that two time entries for research on the same issue alone warrants a reduction in the lodestar. Because the Court does not find the total time billed for this research to be excessive, the Court declines to reduce the lodestar on this basis.

c. **5.5 hours billed on April 16, 1999 and 3 hours billed on April 18, 1999**: Defendant asserts that work that was billed for on these dates duplicates work performed on April 8, 1999. All three time entries are for drafting and reviewing jury instructions. This argument, thus, is essentially the same as Defendant's argument that Plaintiff's counsel spent an

unreasonable amount of time drafting jury instructions, with which the Court has already agreed in part.

d. **7.7 hours billed on April 29, 1999 and hours billed by Mr. Kwong on April 25 and 26, 1999**: Defendant asserts that Mr. Lee billed for tasks that had already been performed by Mr. Kwong because there are several time entries for drafting the pre-trial statement, trial brief and exhibit lists. Specifically, on April 29, there is a time entry for 7.7 hours described as follows: "draft pretrial statement, pretrial brief and exhibit lists." Exhibit 3 to Motion at 29; see also Exhibit A to Opposition at 48 (indicating that this work was performed by Mr. Lee). On April 25, there is a time entry for 2.10 hours described as follows: "draft trial brief, review file." Exhibit 3 to Motion at 7; see also Exhibit A to Opposition at 46 (indicating that work was performed by William Kwong). Finally, on April 26, there is a time entry for 2.2 hours described as follows: "review file; Revise pretrial statement." Exhibit 3 to Motion at 7; see also Exhibit A to Opposition at 46 (indicating that work was performed by William Kwong). These entries do not support Defendant's contention that Plaintiff is billing twice for the same task. Rather, they indicate that Mr. Kwong was assisting Mr. Lee in the preparation of the trial brief, the pretrial statement, and the exhibit list. The Court finds nothing unreasonable about this type of staffing or the total hours bills for the preparation of these documents, and declines to reduce the lodestar on this basis.

e. **1 hour billed on May 10, 1999 and .9 hours billed on May 9, 1999**: Defendant asserts that Lisa Duarte billed for 10 hours of research on May 10, 1999, and that this work duplicated Mr. Lee's work on May 9, 1999. The timekeeper reports indicate that Lisa Duarte billed for one hour, rather than ten, on May 10, 1999 for "Legal Research re: Rule 68 and discussion with Jack Lee." Exhibit 3 to Motion at 39; see also Exhibit A to Opposition at 50-51 (indicating that work was performed by Lisa Duarte). There is also an entry on May 9, 1999 for .9 hours for "research re Rule 68." Exhibit 3 to Motion at 30; see also Exhibit A to Opposition at 50 (indicating that work was performed by Jack Lee). The Court finds nothing unreasonable about these two time entries, which indicate that Ms.

Duarte was assisting Mr. Lee in research on the same general issue, and declines to reduce the lodestar on this basis.

6. Work Billed By Partners Rather Than Associates

Defendant argues strenuously that the lodestar should be reduced because many of the tasks that were performed by partners (and accordingly, billed at partner rates) could have been performed by associates, or even clerical workers more cost-effectively. Opposition at 9-13. Specifically, the Defendant argues that a partner should not have performed legal research, created first drafts of pleadings or discovery requests, or reviewed documents, the bulk of which could have been performed by associates or paralegals. Opposition at 9-13. Although the Court acknowledges that the approaches taken on this issue by various district courts and courts of appeals are not uniform, in view of the evidence submitted in this case, the Court finds that the payment of partners (largely Jack Lee) at their hourly rate for all tasks performed is reasonable.

The starting point for any analysis of this issue is the Ninth Circuit's decision in *Davis v. The City and County of San Francisco*, 976 F.2d, 1536 (9th Cir. 1992). There, the City claimed that the district court abused its discretion by "applying the same hourly rate to each task performed by appellee's counsel." 976 F.2d at 1548. While acknowledging that payment of attorneys' fees for purely clerical work was inappropriate, the Court of Appeals rejected the City's contention, holding that the trial court did not err in applying a uniform rate to all legal work performed by each attorney. *Id.* As the court noted, "[p]rivate practitioners do not generally charge varying rates for the different lawyerly tasks they undertake on a given case, and we have squarely held that district courts can act accordingly in their calculation of fee awards." *Id.* Similarly, in *Suzuki v. Yuen*, the Ninth Circuit approved one rate for research, discussion, drafting, proofreading, and court appearances by counsel. 678 F.2d 761, 764 (9th Cir. 1982). Defendant acknowledged at oral argument that use of a uniform hourly rate for all tasks performed by an individual timekeeper would not be an abuse of discretion.

The decisions by the judges of this district have largely followed this approach. In the district court opinion that the Ninth Circuit affirmed in *Davis* (discussed above), Chief Judge Patel also rejected the argument raised by the City. There, as here, the City had argued that counsel should be compensated at

lower rates "for certain tasks that required less expertise . . . [in order to] promote the use of the commercial law firm-type pyramidal staffing pattern, whereby most work is performed by junior attorneys or senior associates." *United States v. City and County of San Francisco*, 748 F. Supp. 1416, 1432 (N.D. Cal. 1990). The court rejected the City's argument, finding that:

> "in this circuit, there is ample authority for awarding a single fee for all work done." *See, e.g.*, *Suzuki v. Yuen*, 678 F.2d, 761, 764 (9th Cir. 1982) (one rate for research discussion, drafting, proofreading, and court appearances by counsel); *Handgards, Inc. v. Ethicon, Inc.*, 552 F. Supp 820, 823 (N.D. Cal. 1982) (applying one rate to all tasks without delineating types of tasks performed), aff'd, 743 F.2d 1282 (9th Cir. 1984), cert. denied, 469 U.S. 1190 (1985); *Powell v. The United States Department of Justice*, 569 F. Supp. 1192, 1203 (N.D. Cal. 1983) (flat rate for all tasks, including review and organization of documents).

Id. at 1432. As the court noted, there is a substantial debate as to the efficacy of the pyramidal staffing pattern. *Id.* On that basis, the court declined to award fees by task type, and instead granted a uniform rate for each attorney. *Id.*

A similar approach has been taken in other cases in this district. For instance, in *Chabner v. United of Omaha Life Insurance Company,* the court adopted a uniform rate for each attorney and rejected defendant's argument that a "blended rate" was appropriate because partners had performed tasks that should have been delegated to associates. No. C-95-0447 MHP (Memorandum and Order filed October 12, 1999) (awarding attorneys' fees after summary judgment for plaintiff in ADA case). The court noted that in smaller plaintiff firms the "small shop model allows for streamlined coordination, rapid decision making, and a concentration of expertise. It also requires seasoned attorneys to perform a range of legal tasks." Memorandum and Order at 9. Similarly, in *Ramirez v. Runyon*, the court granted plaintiff's motion for attorneys' fees and costs in a discrimination case against the United States Postal Service and awarded both Mr. Yamauchi and Mr. Lee a uniform hourly rate of $350/hour. No. C-97-02983 CW (Order filed August 9, 1999).

In other districts, the rulings on this issue have been mixed. Some district courts outside of the Ninth Circuit have rejected the argument that experienced attorneys should be penalized for doing their own work rather than delegating it to junior lawyers. *Society for Goodwill to Retarded Children v. Cuomo*, 574 F. Supp. 994 (E.D. N.Y. 1983*)* (Weinstein, C.J.). In *Cuomo*, the court declined to adopt the argument that counsel should not be compensated at their higher rate for tasks that could have been performed by associates at lower rates. *Id.* at 1000. As the court noted, such an argument might be

appropriate where a large firm was submitting a claim for legal services. *Id.* at 1000. However, the court noted that "with expert knowledge" the performance of tasks by more experienced or skilled practitioners actually reduced the costs of litigation. *Id. See also Muehler v. Land O Lakes, Inc.*, 617 F. Supp. 1370, 1379 (D. Minn. 1985) (noting that "it would perhaps be more cost efficient if all senior partners engaged in research on the cases they are litigating. That added efficiency underlies the rationale for paying senior partners at a higher rate."); *Roberts v. National Bank of Detroit*, 556 F. Supp. 724, 728 n.1 (E.D. Mich. 1983) (court declines to pay counsel lower rate for work that could have been done by associates because "the attorneys here are not involved in large law practices which allow them to send routine work to associates."). In other decisions, courts outside this circuit have adopted Defendant's suggested approach. *See, e.g., Ursic v. Bethlehem Mines*, 719 F.2d 670, 677 (3d Cir. 1983) (noting that routine tasks that can be delegated to non-professionals or less experienced associates should not be billed at high partner rates); *Bee v. Greaves*, 669 F.Supp. 372, 377 (D. Utah 1987), aff'd in part, rev'd in part 910 F.2d 686 (10th Cir. 1990) (reducing hourly rate of senior attorney on the case in calculating fee award because some of the work he performed could have been delegated to less experienced personnel); *Mautner v. Hirsch*, 831 F.Supp. 1058, 1076 (S.D.N.Y. 1993) (reducing lodestar on basis that partners had performed tasks that could have been performed by less experienced personnel); *In re Churchfield Management and Investment Corp.*, 98 B.R. 838, 872 (N.D. Ill. 1989) (same).

Here, the Defendant has not pointed to any tasks that the Court finds to be purely "clerical" under *Davis* which should not have been performed by lawyers.[11] The issue presented is therefore whether, under these decisions, an attorney in a small firm in a Title VII case should be paid at a lower rate for tasks that could have been performed by less experienced professionals. The Court declines to adopt that approach in this matter.

The decision on whether to reduce by task the hourly rate charged by an individual timekeeper must be addressed on a case-by-case basis. As a preliminary matter, it should be noted that this Court is

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[11] Defendant asserts that the lodestar should be reduced because of a time entry on March 31, 1999 for 4.75 hours for "trial exhibit preparation," which Defendant assumes was for "copying and compiling trial exhibits." Opposition at 13. The Court does not find that the preparation of trial exhibits – which often requires familiarity with the legal and factual issues in the case – is necessarily secretarial and declines to reduce the lodestar on this basis. *See Powell v. United States*, 569 F. Supp. 1192 (N.D. Cal. 1983) (awarding attorneys' fees for time spent organizing, indexing and cross--referencing documents).

reluctant to become embroiled in decisions involving staffing of individual cases or the structuring of the firms that come before it. That level of scrutiny vastly exceeds the typical review where fees are sought, where a court decides whether a particular task was necessary, unnecessary, or the time spent on it excessive. If we were to examine the individual staffing decisions of each firm before us, we would have to consider the minutia behind such a decision, including the availability of associates in the market, whether it made sense for other reasons for the firm not to hire them, whether there are other associates at the firm, what the workload of those associates was like, and similar such individual matters.

Moreover, the Court rejects Defendant's contention that, under the facts of this case, the delegation of research, drafting of pleadings and discovery to lower paid associates and research assistants would have been more efficient. The Court finds that such a staffing method would not, in the context of this cases, have resulted in a lower fee. To the contrary, the declaration of Henry Hewitt, submitted in support of Plaintiff's reply in this matter, supports the opposite conclusion. Mr. Hewitt is a founding partner in the law firm of Erikson, Beasely & Hewitt, with extensive experience both in the area of employment law and in representing public entities. Hewitt Decl. at ¶¶ 2-3. As Mr. Hewitt points out, the use of an experienced lawyer to draft pleadings and do legal research is often more economical for the client. *Id.* at ¶ 8. The cases cited above are to the same effect. Indeed, were the Court to, as a blanket proposition, adopt the pyramidal approach suggested by Defendant in all cases, Plaintiff's counsel would, in some cases, be rewarded for inefficiency in their staffing – by encouraging them to put multiple lawyers on cases when, under the circumstances, one lawyer would provide the most economically efficient service.

In this case, the use of many associates and paralegals would not have resulted in greater efficiency given the number of documents produced and the witnesses identified. Multiple lawyers may be a more efficient method of case management in some circumstances. For example, placing primary review or interview responsibilities in the hands of less experienced and less expensive professionals may be more appropriate where there are thousands of uniform documents to review or many witnesses with largely similar, and simple, stories to tell. Those facts are not presented here. The documents consisted of about 3000 pages of disorganized personnel records, which were reviewed by the attorney who conducted the depositions. This use of time was efficient, and no savings would have resulted by having several junior lawyers review the documents, only to have them reviewed again by the partner for the depositions. Similarly, it was efficient for Mr. Lee, who is experienced in litigating employment discrimination cases, and

knowledgeable about the case, to prepare draft pleadings himself. *See* Supplemental Declaration of Jack Lee at 3, ¶ 5. This is the same conclusion reached by the authorities cited above. *Davis v. The City and County of San Francisco*, 976 F.2d, 1536 (9th Cir. 1992); *Suzuki v. Yuen*, 678 F.2d, 761, 764 (9th Cir. 1982); *Chabner v. United of Omaha Life Insurance Company*, No. C-95-0447 MHP (Memorandum and Order filed October 12, 1999); *United States v. City and County of San Francisco*, 748 F. Supp. 1416, 1432 (N.D. Cal. 1990); *Powell v. The United States Department of Justice*, 569 F. Supp. 1192, 1203 (N.D. Cal. 1983); *Handgards, Inc. v. Ethicon, Inc.*, 552 F. Supp 820, 823 (N.D. Cal. 1982); *Muehler v. Land O Lakes, Inc.*, 617 F. Supp. 1370, 1379 (D. Minn. 1985); *Society for Goodwill to Retarded Children v. Cuomo*, 574 F. Supp. 994 (E.D. N.Y. 1983) (Weinstein, C.J.).

Having carefully reviewed the tasks that Defendant asserts should have been assigned to associates, see Opposition at 9-13 (listing 14 time entries by partners for legal research, 20 time entries by partners for drafting pleadings and discovery requests, and 24 time entries by partners for reviewing documents), the Court does not find that delegation of any of these tasks to associates would have been more cost-effective. The Court is not ruling out pyramidal staffing as an efficient method of litigating a case. Nor is the Court holding that, had it been available, and had it been adopted, pyramidal staffing in this case would have resulted in excessive hours. Rather, the Court finds that, under the circumstances of this case, performance of the tasks challenged by defendants by a single attorney was a reasonable and efficient use of attorney time that is compensable at a uniform hourly rate under Title VII.

Not only is there evidence in this case that the performance of legal research and drafting by partners was efficient, the rule advocated by Defendant would, in Title VII cases, discourage plaintiffs' counsel from even taking Title VII cases. The law firm that represented Plaintiff, Minami, Lew & Tamaki, is small, with only 13 attorneys – of which 4.5 work in the area of employment discrimination. *See* Supplemental Declaration of Jack Lee in Support of Reply Brief for Attorneys' Fees at 3, ¶ 4. This is typical of firms that represent plaintiffs in employment discrimination cases. *See* Exhibit 5 to Reply (National Lawyers Association Survey, indicating that over 95% of all of its members work as solo practitioners or in firms with 19 or fewer attorneys); *see also* Supplemental Declaration of Jack Lee (stating that NELA contains over 3,400 lawyers across the country and stating his opinion that NELA is the largest organization of plaintiffs' employment attorneys). As a result, in the employment area, it is not realistic to

require that plaintiffs' firms always delegate less complex tasks to associates. *See Roberts v. National Bank of Detroit*, 556 F. Supp. at 728 n.1 (court declines to pay counsel lower rate for work that could have been done by associates because "the attorneys here are not involved in large law practices which allow them to send routine work to associates.").

Accordingly, the Court finds that in this particular case, the requirement suggested by Defendant, that Plaintiff's counsel use less experienced lawyers for document review, drafting of pleadings and legal research, is contrary to the public interest embodied in the fee-shifting provisions of Title VII. Those provisions are meant to encourage private enforcement of the statute. *See Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968). In the instant case, such an approach would have the effect of penalizing small firms like Plaintiff's counsel's firm for taking Title VII cases, and ultimately discouraging some of them from taking some Title VII cases.

The decision in *MacDougal v. Catalyst Night Club*, 1999 Daily Journal D.A.R. 10729 (N.D. Cal.), is not to the contrary. In *MacDougal*, Judge Jenkins exercised his discretion to reduce the hourly rate of plaintiff's counsel in a case arising under the Americans with Disabilities Act of 1990.

This case differs from *MacDougal* in a number of critical respects.

First, in *MacDougal* the case had already been litigated to conclusion and settled: the fees at issue were for a second suit that was filed when defendant failed to live up to the terms of the settlement of the first action. *Id.* at 10729-30. The court was concerned that the hours in the second action were excessive and could have been largely avoided had counsel chosen to seek a contempt order in the first action, rather than filing a new lawsuit. *Id.* at 10731. As a result, the court exercised its discretion to reduce the rates charged for some tasks. *Id*.

Moreover, as described above, unlike *MacDougal*, the instant case had many witnesses, factual allegations, and documents to be reviewed. Indeed, defense counsel admitted at oral argument that the defense strategy (to scrutinize Plaintiff's performance under a number of different supervisors) required Plaintiff's counsel to expend extra effort and investigation. Defendant aggressively litigated the case to the eve of trial, as he was entitled to do. The use of a single attorney to perform a variety of tasks was appropriate in this context. Indeed, unlike in *MacDougal*, there was evidence that the use of less experienced lawyers to perform the specific tasks challenged by Defendant would have actually increased

the amount of fees incurred in the matter. *See* Hewitt Declaration at 3, ¶ 8. There was also evidence here, not present in *MacDougal*, that the vast majority of attorneys who represent plaintiffs in employment discrimination cases simply do not have the capability of assigning research or drafting in the first instance to lower paid associates on all cases. A blanket rule reducing fees on a task-by-task basis would therefore be contrary to the intentions of the fee-shifting provisions of Title VII.

Lastly, and perhaps most importantly, unlike the situation in *MacDougal*, Plaintiff's counsel have already exercised their billing judgment by deducting approximately 50 hours worth of time from their lodestar. Therefore, under all of these circumstances, the Court finds that the awarding of a uniform rate for all tasks performed by each attorney is appropriate.[12]

7. Time for Plaintiff's Demand For A Jury Trial

Defendant argues that the time spent researching Plaintiff's age discrimination claim (3.1 hours) ought to be omitted because Plaintiff erroneously requested a jury trial as to this claim in her complaint. However, Defendant acknowledges that Plaintiff "never pursued these claims during discovery and her trial exhibits and witnesses show no evidence to support these claims." Opposition at 16. Where, as here, negligible time was spent on an alternative theory, no offset is appropriate. *See Hensley*, 461 U.S. at 435 (holding that a "fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit").

8. Time for Trial Exhibit Preparation

[12] The Court does not find the Declaration of Ken Muscaret compelling with respect to cost-effective staffing. Mr. Muscaret's expertise is not in Title VII; it is in complex litigation involving principally large firms. *See* Declaration of Ken Muscaret in Support of Opposition to Plaintiff's Motion for Attorneys' Fees at 2-3, ¶¶ 5-7. Moreover, while Mr. Muscaret suggests a blended rate in a conclusory fashion, he does not offer any facts that would show that the delegation of specific tasks in this case to associates would have resulted in a more efficient – and less expensive – representation. With respect to Defendant's argument that the Declaration of Richard Pearl should not be relied upon because Mr. Pearl is biased in favor of plaintiffs, the Court does not reach this issue because it finds that the Plaintiff's position with respect to the efficiency of its staffing decisions in this case is amply supported by the case law and the declarations of Mr. Lee and Mr. Hewitt (cited above). In any event, the bulk of Mr. Pearl's declaration consists of a recitation of facts: the hourly rates charged in specific other cases. In oral argument, Defendant conceded that he does not question the truth of these facts, and the Court finds that Mr. Pearl's recitation of these facts is credible.

Defendant also asserts that any time spent working on Plaintiff's trial exhibits should be omitted from the lodestar because they were untimely and would have been stricken. The Court declines to reduce the lodestar on the basis of speculation that the Court would have stricken the exhibits as untimely had it ruled on Defendant's Motion in Limine. The trial exhibits, as well as the other trial preparation materials, were required by the Court's order.

9. Claims Upon Which Plaintiff Prevailed

Finally, Defendant contends that the fee award should be reduced because "plaintiff had no success on two claims." This argument lacks merit for two reasons. First, Defendant's assertion that Plaintiff did not prevail on two of her claims is unfounded: no claims were dismissed prior to the settlement and the settlement agreement did not differentiate between claims. Second, even if Defendant were correct that Plaintiff did not prevail on two of her claims, this would not justify reducing Plaintiff's fee award. Plaintiff need not prevail on, or even pursue, all of her initial claims in order to be entitled to a fully compensatory fee award, so long as the Plaintiff obtained "substantial relief." *Hensley*, 461 U.S. at 435, 440. Here, Plaintiff obtained a settlement that paid her $150,000.00 – many times her yearly salary – and purged her personnel record of disciplinary actions. This Court therefore finds that Plaintiff obtained "excellent results" and that her attorneys are entitled to be fully compensated.

D. Fees Incurred After Rejection Of "Rule 68 Offer" For Fees

Defendant asserts, without any authority, that its offer to settle the fee dispute for $150,000.00 on June 7, 1999, should be treated as a Rule 68 offer and that Plaintiff should be denied fees incurred after June 7, 1999 because Plaintiff unreasonably rejected the offer. The Court rejects this contention.

First, Rule 68 is not applicable to the instant application by its terms. Rule 68 applies to settlement offers on "claims" before "trial." An award of "reasonable fees" (which Defendant has already agreed to pay) is not a claim and does not entitle any party to a trial. Moreover, the Ninth Circuit has repeatedly held that in Title VII cases a prevailing party is entitled to "fees on fees." *Davis*, 976 F.2d at 1544 (stating that "this court has repeatedly held that time spent by counsel in establishing the right to a fee award is compensable); *D'Emanuele v. Montgomery Ward & Co.*, 904 F.2d 1379, 1387-88 (9th Cir. 1990)

(holding that reasonable fee award in ERISA case included fees for motion to establish entitlement to fees); *Clark v. City of Los Angeles*, 803 F.2d 987, 992 (9th Cir. 1986) (rejecting as frivolous the argument of defendant that fee award should not include fees for preparation of fee petition). This case is no different.

Second, even a valid Rule 68 offer would only shift an entitlement to costs in the event that the rejecting party failed at trial to do better than the offer. In particular, the Rule states that "[i]f the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer." Defendant only offered to pay $150,000.00 in fees. However, the Court has now found that Plaintiff was entitled to approximately $185,000.00 in attorneys fees and more than $6,000.00 in costs (see below) **as of the time of the offer**. Because Defendant's offer is nearly $40,000.00 less than the amount which the Court has now found to be a reasonable award in this case as of the date of the offer, Rule 68's cost-shifting provision is not triggered, even assuming the Rule applies to Defendant's June 7 offer. Plaintiff is entitled to full compensation for fees incurred establishing entitlement to fees.

IV. PLAINTIFF'S COSTS

In Plaintiff's Revised Cost Summary, she seeks a total of $8,863.12 in costs. The Cost Summary contains several items that are not taxable as costs under Civil L.R. 54-3. In particular, the following costs are not taxable: 1) telephone calls ($33.91); 2) fax charges ($236.50); 3) messenger service ($185.83); 4) postage ($42.58); 5) legal research ($8.50); 6) miscellaneous ($323.68). In addition, Plaintiff may not recover the $10.50 sought in the hearing brief for messenger service after the Reply was filed. The Court finds that all other costs sought by Plaintiff are reasonable and are allowable under the Local Rules. Therefore, the Court recommends that Plaintiff's costs be awarded in the amount of $8,032.12.

V. CONCLUSION

Based upon the above analysis, the Court recommends that Plaintiff's motion be granted and that

the Court award Plaintiff $238,795.00 in attorneys fees, that is, $244,745.00 (total attorney's fees sought by Plaintiff) minus $5,950.00 (17 hours of Mr. Lee's time at $350/hour). The Court further recommends that Plaintiff be awarded $8,032.12 in costs.

Dated: November 17, 1999

JOSEPH C. SPERO
United States Magistrate Judge